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January 29, 2021

VIA ECF

The Honorable James L. Cott
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *Caitlin H. Dickerson v. Customs and Border Protection*, 19 Civ. 9017 (JLC)

Dear Judge Cott:

The undersigned counsel represent Plaintiff Caitlin H. Dickerson in the above-referenced Freedom of Information Act (“FOIA”) action. The parties have met and conferred and provide the Court with the following update and joint proposed schedule.

Plaintiff’s Position

Since the parties’ October 30, 2020 joint status letter, Plaintiff left The New York Times and on January 18, 2021, joined The Atlantic as a staff writer where she continues to report on the U.S. government’s policy of separating migrant families at the border. On December 4, 2020, Plaintiff’s prior counsel informed Defendant U.S. Customs and Border Protection (“CBP”) of specific FOIA exemptions invoked by CBP to withhold and redact responsive material that Plaintiff intended to challenge with respect to a document production issued by CBP on September 11, 2020. On December 22, 2020, The New York Times counsel withdrew as counsel in this case, and on December 22, 2020, and December 28, 2020, the undersigned appeared as counsel for Plaintiff. *See* ECF Nos. 40, 49-50.

On January 25, 2021, the parties met and conferred, and Plaintiff’s counsel informed CBP of additional FOIA exemptions invoked by CBP in the September 11, 2020 production that Plaintiff intends to challenge. Subsequently, Plaintiff’s new counsel were made aware of two prior productions issued by CBP on April 7, 2020, and June 30, 2020, promptly notified CBP of this development, and informed CBP that Plaintiff is in the process of determining whether she intends to challenge any of the FOIA exemptions invoked by CBP to withhold and redact responsive material in those prior productions. By no later than February 5, 2021, Plaintiff will provide CBP with a final list of challenges to the FOIA exemptions invoked by the government across all three productions, along with Bates-stamped versions of the April 7, 2020 and June 30, 2020 productions for mutual reference.

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CBP's Position

Since the parties' last status update, CBP has proactively met and conferred with Plaintiff's latest counsel regarding challenged withholdings. CBP is also diligently reviewing certain inquiries by Plaintiff, raised by her counsel during the recent discussions. CBP's, position, however, is that Plaintiff waived her right to challenge any withholdings not identified by Plaintiff for CBP by December 15, 2020, given that this Court had approved a jointly proposed December 15 deadline for the identification of such challenges, *see* Dkt. Nos. 36-37. CBP may seek judicial relief on that waiver issue ahead of any summary judgment briefing.

The parties have agreed to meet and confer again regarding these and other issues, and jointly propose the schedule set forth below:

- By February 12, 2021, the parties shall meet and confer regarding the FOIA exemption challenges raised by Plaintiff and each party's position regarding waiver.
- By February 19, 2021, the parties shall file a joint status letter updating the Court regarding their attempts to resolve this action without need for Court intervention. In the event any disputes remain between the parties, this letter shall indicate whether the parties require Court resolution of the waiver issue, and whether the parties have a proposed timeline for issuance of a *Vaughn* index or summary judgment briefing.

The parties respectfully request that the Court so-order this schedule.

Thank you for consideration of this matter.

Respectfully,

Davis Wright Tremaine LLP

/s/ Laura Handman
Laura Handman
Lisa Zycherman (*pro hac vice*)
Meenakshi Krishnan (*pro hac vice*)

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cc: Counsel of record (via ECF)